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Section 86-1.66. Financially Distressed Hospitals. (a) The provision of necessary medical care may be adversely affected in medical facilities whose revenues are insufficient to cover the costs due to the provision of a disproportionate share of care to low income patients. In such cases, the Commissioner may provide special financial assistance from the pool created in section 86-1.65(n). A facility must apply in writing for such assistance and must demonstrate that all of the following criteria and conditions have been met. All written evidence must be certified by the governing board of the facility.

(b) Qualifying criteria are as follows:

- (1) The hospital is a voluntary nonprofit or private proprietary institution.
- (2) There is a demonstrated public need for continuance in whole or in part of existing hospital services at the current site(s) of the applicant. The determination of public need shall be in accordance with Part 709 of this Title.
- (3) There exists severe financial distress only because of insufficient resources to finance losses from the provision of a disproportionate share of care to low income patients with special needs. Only such losses not reimbursed by the bad debt and charity care distributions received pursuant to section 86-1.65 of this Subpart shall be considered in determining financial distress under this section. To determine the extent of a facility's financial distress a five-year historical review of the facility's financial condition shall be undertaken by the commissioner. This analysis shall include an examination of available reserves including projected income from and application of the following:

- (i) endowment funds;

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- (ii) income from investments;
- (iii) philanthropy;
- (iv) income from board-designated funds;
- (v) overall fund balances; and
- (vi) foundation holdings.

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- (4) Severe financial distress must also be demonstrated by:
- (i) the inability of the facility to obtain credit that would allow the facility to operate on an ongoing basis;
 - (ii) liquidation and utilization of any and all financial resources at the disposal of the hospital, and all other financial support outside of the programs of major third-party payors;
 - (iii) the exhaustion of all possible financial relief from the preceding provisions of this Subpart and all other third-party payors;
 - (iv) the inability of the facility to meet immediate and long-term financial commitments; and
 - (v) a negative fund balance for operations, excluding plant assets and related liabilities.
- (5) The facility has not filed a petition for bankruptcy.
- (6) The governing board of the facility must submit to the Commissioner the opinion of a certified public accountant or a licensed public accountant as to the facility's overall financial condition and its potential to continue viable operations.
- (7) The facility shall demonstrate to the Commissioner that:
- (i) reasonable collection procedures have been implemented to secure payment from those unable or unwilling to pay; and
 - (ii) continuity of effort in providing services to those unable or unwilling to pay has been and shall be maintained.

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